



**KING STUBB & KASIVA**  
ADVOCATES AND ATTORNEYS



**EMPLOYMENT LAW  
UPDATES  
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## LABOUR & EMPLOYMENT BYTES

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### LEAVE ENCASHMENT IS A RIGHT OF AN EMPLOYEE

The Bombay High Court while hearing the plea of two former employees in Writ Petition No. 12161 of 2019, who sought encashment of their privilege leave accumulated over the years of their service, observed that depriving an employee of leave encashment is violative of Article 300A of The Indian Constitution.

The Court stated that the employee has chosen to accumulate his earned leave to his credit and encashment becomes his right. The employer cannot deny employee of such right. The right to leave encashment is a statutory right which cannot be forfeited by explicit statutory provision. The court further observed that pension, gratuity and leave encashment are rights that cannot be deprived without due process of law.

Resignation would not negate the right of leave encashment that the employees would have had at the time of retirement.

### KARNATAKA HIGH COURT SETS ASIDE A LABOUR COURT ORDER REINSTATING A KSRTC CONDUCTOR WITH A HISTORY OF MISCONDUCT

In this case, an inquiry was conducted by the disciplinary authority and the inquiry officer found the conductor guilty and dismissed him from service. Subsequently this order was challenged by the conductor in the Labour Court, Mysuru. Labour Court held domestic inquiry to be fair and proper and partly allowed the claim and modified the punishment reinstating the conductor's service.

The High Court, in W.P. No. 55722 of 2017, noted that misconduct in each case differs from case to case, and courts must see the gravity of misconduct coupled with history of worker. If a worker has a history of misconduct and is not interested in discharging his professional duties diligently, then there is no harm in dismissing the workman. The High Court set aside the order of Labour Court reinstating the conductor.





### **PROPORTIONATE PUNISHMENT MUST BE GRANTED TO AN EMPLOYEE FOR MISCONDUCT**

Where the workman employed as accounts assistant in a factory was dismissed for his absence from the place of work for a few hours, the Bombay High Court held that workman's absence from work for a few hours do not qualify as a misconduct of serious nature. Dismissal for such misconduct is disproportionate and impractical. The employer was ordered to reinstate the workman (W.P. No. 4916 of 2007).

### **TRANSFER OF A WORKMAN REQUIRES VALID REASONS OF SUCH TRANSFER**

The case involves workman's transfer from one place to another and upon his refusal to oblige such transfer order his services were terminated. The Punjab and Haryana High Court in CWP17142-2014(O & M) and connected matters held that the management while deciding upon the transfer of a workman from original place to new place must have valid reasons for such transfer and must be fair. Conditions of transfer must be mentioned in the contract of employment or the standing order beforehand to which the employee agrees at the time of joining the service.

### **AN EMPLOYER IS EMPOWERED TO MAKE RULES FOR RECRUITMENT**

The Allahabad High Court in Special Appeal no. 345 of 2024 upheld the employer's independence in fixing up the eligibility criteria for recruitment. The Court stated that it is within the expertise of institution to decide what it requires. Employer can prescribe qualification based on the needs and interests of the institution.

### **DELAY IN DISBURSEMENT OF RETIREMENT BENEFITS ENTITLES THE EMPLOYEE TO INTEREST**

The bench of Justice Namit Kumar in CWP 602/2023, where the petitioner initially employed as clerk/junior in the municipal corporation and was deprived of pensionary and retirement benefits for a long time, held that an inordinate delay in disbursing retirement

benefits where the delay is not justifiable, the employee will be entitled to interest on the withheld amount.

### **A WARD OF THE EMPLOYER ENTITLED TO GET INSURANCE CERTIFICATE ISSUED BY THE ESIC**

In a case (WP(C) 18641/2024) where the employee is the wife of the owner of the establishment and was enrolled under the Employee State Insurance Act, 1948, the employee's daughter was denied "Ward of Insured Person Certificate" by the ESIC stating that she is not entitled to the same as her father owned the establishment. It was also contended by the ESIC that the daughter enjoyed a higher financial strata and ESI is for the benefit of low-income individuals. The Kerala High Court rejected ESIC's contention and asked the director of ESIC to reconsider the application of the daughter for the grant of "Ward of Insured Person Certificate". The Court directed that statutory schemes must be interpreted strictly keeping in mind its purpose and object, and stated that the ESIC erred in reasoning and only recognized her status through paternal line.

### **THE TIMELINES UNDER THE INDUSTRIAL DISPUTES ACT OVERRIDE THE TIMELINES PROVIDED UNDER THE COMMERCIAL COURTS ACT OR CPC**

The Delhi High Court division bench in LPA 314/2024 overturned the single judge order of the same court which prevented a female employee from filing additional documents at a belated stage of the proceedings before the industrial tribunal without explaining the delay or seeking the leave of the court, and held that the Industrial Disputes Act, 1947 is a beneficial legislation where the strict timelines under the Commercial Courts Act or the Civil Procedure Code ought not to be applied.

### **PERSONAL SERVICES RENDERED IN A PROPERTY ATTACHED TO A COMMERCIAL UNIT DO NOT CONSTITUTE INDUSTRIAL WORK**

A workman who was appointed by an association of owners for rendering services of chowkidar was later



terminated from his employment. He raised a dispute under the Industrial Disputes Act, 1947. The association contended that it does not engage in trade, business or commerce thus they do not fall under the ambit of the said Act. The association presented workman's acknowledgement of his roles within flats but not commercial units. However, the Labour Court ordered for the reinstatement of the workman under the said Act. The High court allowed association's appeal and quashed the Labour Courts award.

### **ESIC ISSUES DIRECTIONS FOR COMPLIANCE WITH THE HIV ACT**

In pursuance of the Supreme Court decision in CPL Ashish Kumar Chauhan Retd. V. Commanding Officer and Ors. Civil Appeal No.(s) 7175 of 2021 directing the central and state governments to ensure strict compliance with the HIV and AIDS (Prevention and Control) Act, 2017 (the "HIV Act"), the ESIC has issued directions dated May 27, 2024 to all ESIC medical colleges and hospitals and ESIS hospitals to ensure provisions of treatment, diagnostic facilities, anti-retroviral therapy and opportunistic infection management to people living with HIV or AIDS.

All the ESIC & ESIS hospitals to ensure that the personnel with significant risk of occupational exposure to HIV, for the purpose of ensuring safe working environment, shall (i) provide, in accordance with the guidelines, firstly, universal precautions to all persons working in such establishment who may be occupationally exposed to HIV; and secondly training for the use of such universal precautions; thirdly post exposure prophylaxis to all persons working in such establishment who may be occupationally exposed to HIV or AIDS; and (ii) inform and educate all persons working in the establishment of the availability of universal precautions and post exposure prophylaxis.

The hospitals to designate a Complaint Officer who shall dispose of the complaint on the violation of the HIV Act. The hospital may also devise SOP to deal with such complaints per the provision of the HIV Act.

### **OFFICE OF DISTRICT MAGISTRATE, GURUGRAM ORDERS FACILITIES TO BE ACCORDED TO EMPLOYEES DUE TO THE OUTBREAK OF SEVERE HEATWAVE**

The District Magistrate of Gurugram taking into account the outbreak of severe heat wave in the district has released an order dated 31st May 2024 Ends No. 67/FRA asking the employers and contractors of such workers, labours, and the RWA societies to arrange the following facilities for their employees:

1. Availability of clean drinking water.
2. Arrangement of shade, ventilation and water coolers at workplace.
3. Provision of ORS/Glucose Kits/Shikanji/Nimbu Pani, water bottles, ice packs for workers.
4. Allocating minimum outdoor work during 12 PM – 4 PM.
5. Covering the medical costs of workers exposed to heatwave related illness.
6. Avoiding the calling of house helps/domestic maids during afternoon.

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